

### **REMARKS**

This response is being submitted within two months of the issuance of the Final Office Action. This response places the application in better condition for, and reduces issues on, Appeal.

Claims 1, 2, and 4-9 are pending in this application. Claims 3 and 11-44 previously were cancelled. Claim 10 has been cancelled by way of this amendment. Claim 1 has been amended to replace the phrase "is not benzalkonium chloride" with "is a polymeric antimicrobial agent." This amendment finds support on page 8, lines 8-14, of the original specification.

Reconsideration of this Application and entry of this Amendment is respectfully requested.

### **Rejections Under 35 U.S.C. §112**

Claims 1 and 4-10 are rejected under 34 USC 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office has objected to the phrase "is not benzalkonium chloride" in Claim 1 as new matter. The Applicants respectfully disagree; however, in order to expedite prosecution, Claim 1 has been amended to recite "is a polymeric antimicrobial agent" in place of the objectionable phrase. This amendment finds support on page 8, lines 8-14, of the original specification. Since the objectionable matter has been removed from the claims, the rejection is moot and the Applicants respectfully request withdrawal of this rejection.

The Office stated that if the phrase "is not benzalkonium chloride" was removed from the claims, the previously withdrawn rejections (presumably the Kovacs-Hadady and Park rejections) would be reinstated. Kovacs-Hadady is directed to determining the presence of benzalkonium chloride in a solution. Kovacs-Hadady says nothing about prediction of antimicrobial or cellular activity.

Further, neither Kovacs-Hadady nor Park provide any motivation to transform that which is disclosed by Kovacs-Hadady into a system for predicting cellular activity. In addition, the claims have been amended to recite that the agent must be “a polymeric antimicrobial agent,” which also necessarily excludes benzalkonium chloride but presumably is less objectionable to the Office than the phrase “not benzalkonium chloride.” A skilled artisan would not expect Kovacs-Hadady’s non-polymeric benzalkonium chloride to behave in the same manner (e.g., creation of ion pairs) as Park’s polymeric biguanide compounds. A skilled artisan, therefore, would not seek the teachings of Park to augment the teachings of Kovacs-Hadady.


If excluding benzalkonium chloride from the claims previously was effective at overcoming these cited references, the present claim amendment should be no less effective at overcoming the same cited references. Since neither Kovacs-Hadady nor Park provides any motivation to make a system for predicting cellular activity and a skilled artisan would not seek Park to combine with Kovacs-Hadady, the Applicant respectfully submits that the present claims are patentable over this art.

**CONCLUSION**

The Applicant respectfully requests withdrawal of all rejections and that a Notice of Allowance be issued for this application. The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 502317. If any issues remain, the Examiner is invited to contact the undersigned.

Respectfully submitted,

Dated: October 31, 2007

  
\_\_\_\_\_  
Nicole Bradley  
Registration No. 48,718  
Attorney of Record  
CUSTOMER NUMBER: 33,357  
(714) 247-8510